IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 79-208

ISAAC KAPLAN d/b/a INSJARL REALTY CO., for an Order Pursuant to Article 78 of the Civil Practice Law and Rules,

Appellant,

—against—

JEROME PRINCE, FRANK A. BARRERA, IRVING H. STOLZ, PAUL A. VICTOR, MARC A. GOODMAN, JACOB B. WARD, MARTY MARKOWITZ & ROBERT C. WEAVER, being the members of the CONCILIATION AND APPEALS BOARD, and the HOUSING AND DEVELOPMENT ADMINISTRATION,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION—FIRST JUDICIAL DEPARTMENT

APPENDIX

MYRON BELDOCK
JON B. LEVISON
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565 Fifth Avenue
New York, New York 10017

Attorneys for Appellant

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ITEM A

Judgment of the
New York Court of Appeals
dated May 10, 1979

STATE OF NEW YORK

COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the tenth day of May A.D. 1979

PRESENT, HON. LAWRENCE H. COOKE,
Chief Judge, presiding

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1 Mo. No. 412
Isaac Kaplan d.b.a. Insjarl Realty Co., Appellant,
For an Order &c.
vs.
Jerome Prince &ors., being the Members of the conciliation and Appeals Board, &ano.,
Respondents.

A motion for leave to appeal and

for a stay to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is

denied with twenty dollars costs and necessary reproduction disbursements.

/s/ Joseph W. Bellacosa
Joseph W. Bellacosa
Clerk of the Court

ITEM B

Order of the Appellate Division, First Department dated March 15, 1979

(Denying reargument and leave to appeal to the Court of Appeals)

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on March 13, 1979

Present--Hon. Harold Birns, Justice Presiding
Herbert B. Evans
Arnold L. Fein
Joseph P. Sullivan
J. Robert Lynch, Justices

Isaac Kaplan d/b/a Insjarl Realty Co., for an Order Pursuant to Article 78 of the CPLR,

Petitioner-Appellant,

-against-

M-724

Jerome Prince, Frank A. Barrera, Irving H. Stolz, Paul A. Victor, Marc A. Goodman, Jacob B. Ward, Marty Markowitz and Robert C. Weaver, being the members of the Conciliation and Appeals Board, and the Housing and Development Administration,

Respondents-Respondents.

The above named petitioner-appellant having moved for reargument of, or for

leave to appeal to the Court of Appeals from, the order of this Court entered on February 1, 1979.

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the papers filed in support of said motion and the papers filed in opposition or in relation thereto; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied with $20 costs.

ENTER:

Joseph J. Lucchi
Clerk.

NOTICE OF ENTRY
SERVED BY MAIL MARCH 15, 1979

ITEM C

Order of the Appellate Division, First Department dated February 2, 1979

(Affirming judgment of Supreme Court, New York County)

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on February 1, 1979.

Present--Hon. Harold Birns, Justice Presiding
Herbert B. Evans
Arnold L. Fein
Joseph P. Sullivan
J. Robert Lynch, Justices.

Isaac Kaplan d/b/a Insjarl Realty Co. for an order pursuant to Article 78 of the Civil Practice Law and Rules,

Petitioner-Appellant,

-against-

4495

Jerome Prince, Frank A. Barrera, Irving H. Stolz, Paul A. Victor, Marc A. Goodman, Jacob B. Ward, Marty Markowitz & Robert C. Weaver, being the members of the Conciliation and Appeals Board and the Housing and Development Administration,

Respondents-Respondents.

An appeal having been taken to this Court by the petitioner-appellant from the judgment of the Supreme Court, New York

County (Shainswit, J.), entered on July 14, 1978, denying petitioner's application and dismissing the petition, and said appeal having been argued by Mr. Joseph H. Muraskin of counsel for the appellant, and by Mr. Cullen S. McVoy of counsel for the respondents; and due deliberation having been had thereon,

It is unanimously ordered that the judgment so appealed from be and the same is hereby affirmed, and that the respondents shall recover of the appellant $75 costs and disbursements of this appeal.

ENTER:

Joseph J. Lucchi
Clerk.

NOTICE OF ENTRY
SERVED BY MAIL
FEB. 2, 1979

ITEM D

Judgment of the Supreme Court, New York County, July 14, 1978

At a Special Term, Part I of the Supreme Court of the State of New York held in and for the County of New York, at the Courthouse, 60 Centre Street, Borough of Manhattan, City of New York on the 20th day of June, 1978

P R E S E N T :

HON. BEATRICE SHAINSWIT

Justice.

ISAAC KAPLAN, d/b/a INSJARL REALTY CO., for an Order Pursuant to Article 78 of the Civil Practice Law and Rules,

Petitioner,

-against-

JEROME PRINCE, FRANK A. BARRERA, IRVING H. STOLZ, PAUL A. VICTOR, MARC A. GOODMAN, JACOB B. WARD, MARTY MARKOWITZ, & ROBERT C. WEAVER, being the members of the CONCILIATION AND APPEALS BOARD, and the HOUSING AND DEVELOPMENT ADMINISTRATION,

Respondents.

JUDGMENT

Index No.

A proceeding having come on to be heard before me on April 13, 1978 for judicial review pursuant to Article 78 of the Civil Practice Law and Rules;

NOW, upon reading and filing the Order to Show Cause herein signed by Hon. Max Bloom dated January 26, 1978, and the Petition verified January 25, 1978, and the exhibits annexed thereto, all submitted in support of the Petition, the Answer to said Petition, verified April 11, 1978, and the affidavit of Ellis S. Franke sworn to April 11, 1978, all submitted in opposition thereto, the Notice of Cross-Motion to Dismiss Petition by respondent Department of Housing Preservation and Development (successor to Housing and Development Administration) dated April 11, 1978, the Affirmation of Charles Olstein dated

April 11, 1978, and the Exhibit annexed thereto, and the affirmation of Charles Olstein dated April 14, 1978, in support of the cross-motion, the Affirmation of Joseph H. Muraskin, dated April 12, 1978, and the Court having read and considered the Return filed by the New York City Conciliation and Appeals Board, the papers and documents upon which the order of the New York City Conciliation and Appeals Board here under review was made, and upon all the papers and proceedings heretofore had herein, and after hearing Joseph H. Muraskin (David Mandel, of counsel), Attorney for the Petitioner, in support of said Petition, Ellis S. Franke, General Counsel to the New York City Conciliation and Appeals Board, Attorney for the CAB Respondents (Cullen S. McVoy, Assistant Counsel, of Counsel), in

opposition thereto, and Allen G. Schwartz, Corporation Counsel, Attorney for Department of Housing Preservation and Development (Charles Olstein, of Counsel) in support of the Cross-Motion to Dismiss the Petition, and due deliberation having been had thereon, and the Court having rendered its written memorandum opinion,

NOW, upon motion of ALLEN G. SCHWARTZ, Corporation Counsel, it is

ORDERED that the cross-motion be and the same is hereby granted in all respects; and it is further

ORDERED that petitioner's application for judgment be and the same is hereby denied in all respects; and it is further

ORDERED and ADJUDGED that the petition be and the same is hereby dismissed with prejudice; and it is further

ORDERED and ADJUDGED that respondents recover of petitioner dollars costs of this proceeding.

E N T E R :

s/Beatrice Shainswi
J.S.C.

F I L E D

Jul 14 1978

New York
Co. Clerk's
Office

s/Norman Goodman
Clerk

ITEM E

**Decision of the Supreme Court,
New York County, dated
May 16, 1978**

DECISION

SUPREME COURT: NEW YORK COUNTY
SPECIAL TERM: PART I

----------x

ISAAC KAPLAN d/b/a INSJARL REALTY CO.,

Petitioner,

for an Order pursuant to Article 78 of The Civil Practice Law and Rules

-against-

JEROME PRINCE, FRANK A. BARRERRA, IRVING H. STOLZ, PAUL A VICTOR, MARC A. GOODMAN, JACOB B. WARD, MARTY MARKOWITZ, & ROBERT C. WEAVER, being the members of the CONCILIATION AND APPEALS BOARD, and the HOUSING AND DEVELOPMENT ADMINISTRATION,

Respondents.

----------x

SHAINSWIT, J.:

This is an Article 78 proceeding, seeking to set aside a determination of the Conciliation and Appeals Board as

being arbitrary and capricious.

Respondent Housing and Development Administration cross-moves to dismiss the petition as against it. That motion is granted both on jurisdictional grounds for late service, and because the petition fails to state a cause of action against HDA and indeed demands no relief as against HDA.

As to the remaining respondents, the petition is likewise dismissed. There is no basis to the challenge. Petitioner here unilaterally removed the operators from its elevators and installed a television security system. Respondent, after a full hearing, found this action by the landlord to be a violation of its rules. Because respondent determined that the violation was a wilful one, petitioner was fined $3,500. This action was

solidly based on the record since, in the past, petitioner had reduced the attended elevation service and the Board had ordered him to restore it. On complaint by petitioner, that decision was reviewed by this Court (Spector, J., NYLJ June 1, 1972) and the petition was dismissed, leaving the Board's order intact. Services were restored and remained in effect until the landlord made the present change, this time on the theory that the television security system would make up for the loss in protective services. The Board did not agree and found that protective services were reduced.

The questions as to what are "required services" under the Rent Stabilization Code, and what constitutes a diminution of those services, are factual de-

terminations which are properly made by respondent (Sherwood Assoc. v. C.A.B., NYLJ Sept. 22, 1971, p. 2, col. 3). The determination by respondent that petitioner must continue its prevailing practice of having the elevators attended is authorized by Section 62 of the Rent Stabilization Code.

That code also provides for the imposition of sanctions. Under the circumstances a fine of $3,500 is not arbitrary. Petitioner did unilaterally violate the prior order of the Board, which had been, in effect, affirmed by the Court.

This Court finds that the respondent's determination has a rational basis and, accordingly, was neither capricious nor arbitrary. This application is denied and the petition is dis-

missed.

Settle judgment.

Dated: May 16, 1978

s/ B.S.
J.S.C.

ITEM F

Expulsion Order of the
Conciliation and Appeals
Board dated July 12, 1979

EXPULSION ORDER NUMBER 327

DOCKET NUMBER	4074
OPINION NUMBER:	1545
COMPLIANCE ORDER NUMBER:	1545-C-25
TENANT: ADDRESS:	Mildred Schwartz 750 Park Avenue New York, N.Y.10021
SUBJECT BUILDING:	Same - Apt. 10-B
OWNER:	Insjarl Realty Co. c/o Joseph Muraskin, Esq. 1350 Avenue of the Americas New York, N.Y. 10019 and Myron Beldock, Esq Beldock, Levine and Hoffman 565 5th Avenue New York, N.Y. 10017

FACTS:

The owner is a member of the Rent Stabilization Association and the dwelling unit involved is subject to the Rent Stabilization Law.

The tenant filed a complaint of diminution of services alleging that the owner has decreased manned 24 hours a day elevator and doorman service by converting the 7:30 a.m. to 4 p.m. daytime elevator shift to self-service.

The Board issued its Order and Opinion Number 1545 (copy attached) on October 19, 1971, directing the owner to restore elevator and protective services to the required level by having the elevator manned by an operator during the 7:30 a.m. to 4 p.m. shift as well as during the remaining two shifts.

The owner sought judicial review of the Board's Order and Opinion 1545. The court dismissed the owner's petition. The court stated "...this curtailment of manually-operated services ipso facto, is a "modification" of those services

provided by petitioner on May 31, 1978". (Matter of Insjarl Realty Co. v. Conciliation and Appeals Board, N.Y.L.J., June 1, 1972, p. 17, col. 4 (Sup. Ct., N.Y. Co., Spector, J.) No appeal was filed as to that court order.

No further complaint was received from the tenants as to manned elevator service until subsequent to their being served with a letter from the managing agent of the building dated June 10, 1975. Said letter advised the tenants that "...on and after June 21, 1975, the north passenger elevator will be operated automatically under tenant control, in lieu of its present manual operation." The tenants contended that a termination of manned elevator service would violate the

Board's Order in Opinion Number 1545.

Subsequently, the owner advised that he did not intend to violate the previously issued Board Order (Opinion 1545). It contended that installation of a closed circuit TV security system would be a "substitution" for the manned elevator operators; that the elevator operators were being removed; and if there were any tenant complaints, the owner would respond thereto and request a hearing.

On August 27 and 28, 1975 an Order to Show Cause was served upon the parties. In addition copies of said order were served upon other tenants who had filed new complaints regarding the discontinuance of manned elevator service in the subject building. A hearing was conducted by the staff of this Board on

the Order to Show Cause.

Thereafter on January 12, 1978 the Board issued Compliance Order Number 1545-C-25 (copy attached) directing the owner to restore the required service of manned, 24 hour a day, elevator and doorman services at the subject premises as it was directed in Opinion Number 1545. In addition thereto, the Board levied a fine of $3,500.00 against the owner. The order further advised the owner that if it failed to comply with the two Board's Orders issued herein, the Board would notify the Housing and Development Administration (now known as the Department of Housing Preservation and Development) that the owner had forfeited its membership in the Rent Stabilization Association; and that the building would be referred to the Office

of Rent Control for appropriate action to subject the premises to control under the provisions of City Rent Control (Title Y, Chapter 51 of the Administrative Code of the City of New York).

Subsequently, the owner sought judicial review of the Board's Compliance Order. The owner obtained a series of court ordered stays of enforcement of the Board's Order. A bond was posted by the owner to assure the payment of the fine of $3,500.00 levied by the Board.

The court dismissed the owner's petition to set aside the Board's Order, Matter of Issac Kaplan, d/b/a Insjarl Realty Co. v. Conciliation and Appeals Board, N.Y.L.J. May 19, 1978 p. 7, Col. 1 (Sup. Ct. N.Y. Co., Shainswit, J.). (Copy attached). The Appellate Division,

First Department unanimously affirmed, without opinion, the lower court's decision by order entered February 1, 1979. Thereafter, in an order dated March 13, 1979, the Appellate Division denied a motion for leave to appeal to the Court of Appeals and for re-argument. On May 10, 1979, the Court of Appeals denied the appellant's motion for leave to appeal. A copy of the order denying the motion for leave to appeal was served upon the owner on May 16, 1979.

Subsequently, in attempting to obtain compliance with the Board's Orders issued herein, members of the staff of the Board were advised that attorneys, newly engaged by the owner intended to institute proceedings in the Federal courts on a constitutional question; and, that they would attempt to seek a stay of the

Board's orders in said courts. The attorneys requested that the matter be held in abeyance in order for them to confer with the owner, until July 2, 1979. Said request was granted.

The owners attorneys by letters dated July 5 and July 11, 1979 and attachments thereto submitted certain material to the Board by way of a request for a "stay" of enforcement of the Board's order contending that a further appeal will be taken to the Federal courts on a constitutional question as well as other questions of law and fact.

The owner proposed that in consideration of a grant of a "stay" of the Board's Order herein, it would be pe prepared to pay the fine previously levied by the Board ($3,500.00), under protest, on condition that said fine be

recovered if the owner prevails in the appeal.

In addition, the owner offers to forego rent increases while the appeal is pending (as a self imposed penalty) until the appeal is determined; and, if the owner is not successful on appeal, it would seek to collect the rent increases prospectively only. If it is successful on appeal, it would seek to collect the increases retroactively.

As an alternate proposal, the owner offers to restore one elevator operator despite its feeling that there is no need for the elevator operators.

APPLICABLE LAWS AND REGULATIONS:

Section YY51-6.0 of the Rent Stabilization Law
Sections 2(m) 7,8 and 62 of the Code.

DETERMINATION:

After due deliberation and based upon the entire record, the Board unanimously holds that the owner's request for a "stay" of enforcement of the Board's Order previously issued herein is denied.

Section 7(b) of the Rent Stabilization Code provides that a member of the Rent Stabilization Association shall forfeit his status as a member in good standing and shall have his membership terminated pursuant to an Order of the Conciliation and Appeals Board in the event that the Conciliation and Appeals Board determines that as to one or more dwelling units in the building the owner has failed to abide by an Order of the Conciliation and Appeals Board within ten (10) days of the date of issuance

of such Order. As the facts herein demonstrate, this owner has failed to abide by two (2) Orders of the Board issued respectively on October 19, 1971 (Opinion Number 1545) and January 12, 1978 (Compliance Order Number 1545-C-25) to restore service to the required level by restoring manned elevator service 24 hours a day as directed in Opinion Number 1545 and Compliance Order Number 1545-C-25.

Accordingly, this Board unanimously holds that this owner has forefeited its status as a member in good standing of the Rent Stabilization Association and its membership in such association is hereby terminated as to all the rent stabilized apartments at 750 Park Avenue, New York, N.Y. and; that

the rentals of all rent stabilized tenants in the subject building be immediately reduced to the rental in effect prior to the current guideline increases unless, within seven (7) days of the date of service of a copy of this order upon it, the owner: a) restores required elevator operators for two shifts of manned elevator service (the 12 midnight to 7:30 or 8:00 a.m. shift to be covered by the doorman); and, b) the owner pays the fine of $3,500.00 previously levied against it by this Board. The aforesaid fine payable to the Rent Stabilization Association is to be forwarded to the offices of the Conciliation and Appeals Board.

If, at the end of the aforementioned seven (7) day period, the owner

has not fully complied with this Order, this matter will be referred to the Department of Housing Preservation and Development for appropriate proceedings to subject it to control under the provision of the City Rent Control Law (Title Y, Chapter 51, New York City Administrative Code).

Section 62E of the Code provides that this Board may reduce the rent of the tenants if it finds that services have not been provided.

In the event that the owner complies fully with this Order; and, remains a member of the Rent Stabilization Association, this Order's provisions are without prejudice to the tenant's right to exercise their remedy, if appropriate, under Section 62E of the Code.

CONCILIATION AND APPEALS BOARD

July 12, 1979

Participating:

Emanuel P. Popolizio, Chairman
Marc A. Goodman
H. Dale Hemmerdinger
Marty Markowitz
Allan Stillman
Paul A. Victor
Jacob B. Ward

ITEM G

Compliance Order of the Conciliation and Appeals Board dated January 12, 1978

COMPLIANCE ORDER NUMBER 1545-C-25

DOCKET NUMBER: 004074

TENANT: Various
ADDRESS: 750 Park Avenue,
New York, N.Y.

SUBJECT BUILDING: Same

OWNER: Insjarl Realty Co.
c/o Douglas Elliman
Gibbons & Ives, Inc.
ADDRESS: 575 Madison Avenue
New York, NY 10022

FACTS:

The owner is a member of the Rent Stabilization Association and the dwelling units involved are subject to the Rent Stabilization Law. The building in question contains 68 residential apartments and three professional offices.

This Board issued a previous order in this matter: Order and Opinion No. 1545 on October 19, 1971. In that Board proceeding (Docket No. 004074) the

tenant had filed a complaint alleging that the owner had decreased the required service of manned, 24 hours a day, elevator and doorman service by converting the 7:30 A.M. to 4:00 P.M. daytime elevator shift to self-service. The Board found under Order and Opinion No. 1545 that the facts clearly established that the owner undisputedly was providing manually operated elevator service on a 24 hour basis on May 31, 1968, the base date for required services under the Rent Stabilization Law and Code. Accordingly, the Board, pursuant to Order and Opinion No. 1545, directed the owner to restore elevator and protective services to the required level by having the elevator manned by an elevator operator during the 7:30 A.M. through 4 P.M. shift as well as during the

remaining two shifts. The owner of the building was directed to comply with the terms of Order and Opinion No. 1545 within ten days from the date a copy thereof was served upon it. The owner initiated an Article 78 proceeding challenging the Board's Order and Opinion. The Court dismissed the owner's petition, with the Court stating "However, this curtailment of manually-operated services ipso facto, is a 'modification' of those services provided by petitioner on May 31, 1968". [Matter of Insjarl Realty Co. v. Conciliation and Appeals Board, N.Y.L.J., June 1, 1972, p. 17, col. 4 (Sup. Ct., N.Y. Co., Spector, J.)]. No appeal was filed as to the aforesaid order of the Court.

No further complaint from the

tenants as to manned elevator service was received by this Board until subsequent to service upon them of a letter dated June 10, 1975 from the managing agent of the building. The June 10, 1975 letter to the tenants stated that "***on and after June 21, 1975, the North passenger elevator will be operated automatically under tenant control, in lieu of its present manual operation". The tenants asserted that such a termination of manned elevator service violated Order and Opinion No. 1545 issued by this Board. On June 20, 1975 a letter from the Chief of the Division of Compliance of this Board was served by hand upon the attorney for the owner advising him that any unilateral action, as specified in the owner's June 10, 1975 letter, prior to the filing of an application

by the owner with this Board and the issuance of a Board order determining such application, may be viewed by the Board as a wilful violation of the Rent Stabilization Law and Code, and Opinion No. 1545. In a reply letter dated June 24, 1975, the attorney for the owner stated that he had contacted members of the staff of the Board and had been apprised by them that the owner could apply upon notice to all 68 tenants, to the Board for an advisory opinion prior to installation. The attorney for the owner stated in his reply letter that he understood an alternative to the aforementioned procedure would be to make its proposed substitution of a closed circuit TV security system and remove the elevator operators; and if there were any tenant complaints the

owner would then reply thereto and request a hearing. The letter from the owner's attorney went on to state that after such considerations, the owner decided to install the security system, give notice to the tenants that manned elevator service would be terminated on June 21, 1975, that very few of the tenants complained to the Conciliation and Appeals Board and the plan was effective as outlined. It was contended in the letter that the owner did not intend to violate the previously issued Board order. A hearing of the parties was requested in the letter on behalf of the owner.

On August 27 and 28, 1975 an Order to Show Cause entitled "In the Matter Between the Conciliation and Appeals Board and Insjarl Realty Co." was served on the owner, the attorney for the

owner, and the tenant, Schwartz. Additionally copies of the Order to Show Cause were served upon the following tenants who had recently filed new complaints about termination of manual elevator service: Fenton, Apt. 11A (Docket No. 11864), Apfelbaum, Apt. 10C (Docket No. 11939), Boorman, Apt. 17B (Docket No. 12368). The owner was required thereby to show cause why it "should not forfeit its status as a member in good standing and shall not have its membership in the Rent Stabilization Association with respect to the entire building therein suspended or terminated for its refusal to abide by an order of said Conciliation and Appeals Board". The hearing was attended by Issac Kaplan, the principal of Insjarl Realty Co., owner and tenants

Schwartz, Sampson and Boorman. The owner, in direct oral testimony and cross-examination stated under oath, as well as in a written submission, that the building contains one passenger elevator and that elevator was manned by operators on a 24 hour basis on the May 31, 1968 base date; that the owner, subsequent to a compoaint filed by the tenant Schwartz, was directed by Order and Opinion No. 1545 issued by the Conciliation and Appeals Board on October 19, 1971 to continue to provide the same level of manned passenger elevator service as existed on May 31, 1968; and that the Board's order was upheld by the Supreme Court, New York County (Spector, J.) upon Article 78 challenge by the owner.

The owner testified that several apartments in the building were vacant as of the date of the hearing and that it would be a financial hardship to continue with the base date service of furnishing manned elevator service 24 hours a day on the passenger elevator. The owner also stated that the installation of the closed circuit TV security system and the removal of manned operators from the passenger elevator resulted in a substitution of services as opposed to a diminution of services in derogation of the Rent Stabilization Law and Code. The owner stated on direct examination that the tenants are afforded the same degree or greater protection and security with the new system as was provided by manned operation of elevators.

The tenants, Schwartz, Boorman and Sampson disputed the owner's contentions and testified inter alia, that security had been substantially curtailed, since the doormen who now observe the closed circuit security system often leave their posts thereby providing an opportunity for intruders to board the unmanned elevator. Further, the tenants testified that manned elevator operation was provided on the base date May 31, 1968, and that the change in the level of service constitutes a diminution of services in violation of the Board's Order and Opinion and the decision of the Supreme Court, (Matter of Insjarl Realty Co. v. Conciliation and Appeals Board, cited above).

The hearing officer appointed by this Board questioned the owner

as to his contention that furnishing manned elevator service, as was the base date practice, constitutes a financial burden. The owner acknowledged that he was aware of the comparative hardship provisions of the Rent Stabilization Law and Code, but indicated that he wasn't interested in pursuing that course.

The tenant, Boorman who resides at the subject premises made a motion returnable September 19, 1975, shortly after the Board completed its hearings, seeking a preliminary injunction against the owner of the building and what the Court later described as a proceeding analogous to a "request for Summary Judgment." The tenant alleged therein substantially the same issues as were before this Board in its proceeding. The

Court in Boorman v. Insjarl Realty Co., et al., referred to in N.Y.L.J., December 15, 1975, p. 10, col. 4 (Sup. Ct. N.Y. Co., Helman, J.) (mem. op. dated December 10, 1975, Index No. 16213/75) denied the Tenant's motion and held that the Plaintiff-Tenant has an adequate remedy under the Rent Stabilization Law, which she is presently pursuing and that the Tenant should exhaust her administrative remedies.

APPLICABLE LAW AND REGULATIONS:
Section YY51-6.0 of the Rent Stabilization Law
Section 2(m), 7,8 and 62 of the Code

DETERMINATION:

Section 7(b) of the Rent Stabilization Code provides that a member of the Rent Stabilization Association shall forfeit his status as a member in good standing and shall have his membership terminated by an order of the Conciliation and Appeals Board, where the Board determines that, as to one or more dwelling units in the premises, the owner has refused to abide by an order of the Conciliation and Appeals Board within ten days of the date of issuance of such order.

Based on the record before the Board in the instant matter, the Board finds that the owner has violated both its obligations pursuant to the Rent Stabilization Law and Code and Order and Opinion No. 1545 of this Board which was sustained by the Supreme Court in Matter of Insjarl Realty Co. v. Conciliation and Appeals Board, N.Y.L.J., June 1, 1972, p. 17, col. 4 (Sup. Ct., N.Y. Co., Spector, J.).

The Board notes that the terms and conditions of this order are consistent with the owner's obligations under the Rent Stabilization Law and Code to

maintain all services at the level provided on May 31, 1968 and are based on the Board's and Court's previous rulings regarding this owner's obligation to provide manned, 24 hour a day, elevator and doorman service at the premises 750 Park Avenue, New York, N.Y. The costs of maintaining services and equipment in a building, other than major capital improvements to the building, are reflected in the periodic rent guidelines increases the owner receives under Rent Stabilization. These increases, which a tenant of a rent stabilized apartment must pay each time he renews his tenancy, are designed by the New York City Rent Guidelines Board, inter alia, to compensate owners for the maintenance of services to insure that the owner may meet its obligations under the

Rent Stabilization Law to maintain the building and its facilities at the level provided on May 31, 1968. Mechanical devices do not assure the tenant the same level of services as provided on the base date. Matter of Sommer v. Prince, 55 A.D. 2d 535 389 N.Y.S. 2d 791 (1st Dept., 1976) Motion for leave to appeal denied by Court of Appeals, N.Y.L.J. May 17, 1977, p. 6, col. 2.

The Board therefore directs the owner of the premises, within ten (10) days of the date service of this order is made upon the parties, to restore the required service of manned, 24 hours a day, elevator and doorman services at the premises 750 Park Avenue, New York, New York as required by Order and Opinion No. 1545 of this Board. Further, Section 8 of the Rent Stabilization Code provides that any

action of any member constituting a violation of the Rent Stabilization Law and Code shall result in such discipline, fine or sanction as may be determined by the Conciliation and Appeals Board.

The record herein warrants immediate disciplinary action under Section 8 as follows: a fine in the amount of $3,500.00 payable within ten (10) days after service of this order. The aforesaid fine payable to the Rent Stabilization Association is to be forwarded to the offices of the Conciliation and Appeals Board within such ten day period.

In the event the owner fails to comply with the conditions of this order and the directives contained in the Board's prior order, within the specific time periods prescribed herein, the Board will immediately notify the

Housing and Development Administration that the owner has forfeited its membership in the Rent Stabilization Association effective as of the date service of this order is made on the owner and shall refer all of the dwelling units in the premises 750 Park Avenue, New York, NY to the Offices of Rent Control in the Department of Rent and Housing Maintenance for appropriate administrative action to subject the premises to control under the provisions of the City Rent Control Law (Title Y, Chapter 51 of the Administrative Code of the City of New York).

CONCILIATION AND APPEALS BOARD
January 12, 1978

Participating:

Dean Jerome Prince, Chairman
Frank A. Barrera
Irving H. Stolz
Paul A. Victor
Marc A. Goodman
Jacob B. Ward

Marty Markowitz

Concurring:

Robert C. Weaver

ITEM H

Opinion of the Conciliation and Appeals Board dated October 14, 1971

OPINION NUMBER 1545

DOCKET NUMBER: 004074

TENANT: Hyman Schwartz
ADDRESS: 750 Park Avenue, New York, N.Y. 10021

SUBJECT BLDG: Same - Apt. 10B

OWNER: Imperial Realty Co.,
Attn: Mr. Ralph R. Russ

ADDRESS: 358 Fifth Avenue, New York, N.Y.

FACTS:

The owner is a member of the Rent Stabilization Association and the dwelling unit involved is subject to the Rent Stabilization Law of 1969.

The present tenant took occupancy of the subject apartment pursuant to a lease which commenced March 1, 1969 and expired February 28, 1971. When this lease expired, the parties executed a renewal lease for a one year term beginning March 1, 1971 and terminating March 1,

1972. The amount of rent is not in issue.

The tenant filed a complaint of a decree in required services, stating that the owner had maintained manned elevator and doorman service 24 hours a day until April 30, 1971 but that on April 30, 1971, the owner converted the 7:30 a.m. to 4 p.m. daytime elevator shift to a self-service shift and that such action constituted a decrease in required services. The tenant states, on information and belief, that the elevator was manually operated round the clock on May 31, 1968.

In its answer, the owner conceded that the elevator was fully manned 24 hours a day on May 31, 1968 but alleges that the passenger elevator has always been an automatic elevator and although manually operated, the manual opera-

tion of this automatic elevator was eliminated during the hours of 8 a.m. to 4 p.m. because there was very little traffic on the elevator during those hours. The owner contends that it is not a reduction in required services to convert a manually operated elevator to automatic operation so long as 24 hour doorman service is provided.

The tenant, in reply, reasserts that the shift eliminated was from 7:30 a.m. to 4 p.m., not 8 a.m. to 4 p.m. as alleged by the owner, and alleges that the security in the elevator was decreased when the owner removed the elevator operator from that shift. The tenant claims he rented an apartment in this building partly because of the feeling of security he derived from

a manually operated elevator service 24 hours a day.

APPLICABLE LAW AND REGULATIONS:

Sections 2(m) and 62 of the Code.

DETERMINATION:

Section 62 of the Code prohibits an owner from evading the stabilized rent or other requirements of the Code by modification of required services. Section 2(m) of the Code defines "required services" as "(t)hat space or those services which were furnished or were required to be furnished for the dwelling unit on May 31, 1968" including elevator service and protective services. The purpose of the Rent Stabilization Law and Code is to protect tenants from exorbitant increases in rent and modification of the services provided in consideration

for that rent. Protective services are specifically mentioned in Section 2(m) as a "required service". The facts in this case are undisputed that the owner maintained manually operated elevator service on a 24 hour basis on May 31, 1968. The owner is therefore directed to restore elevator and protective services to said level by having the elevator manned by an elevator operator during the 7:30 or 8 a.m. through 4 p.m. shift as well as during the remaining two shifts.

The owner is directed to comply with the terms of this order within ten (10) days from the date a copy hereof is served upon it.

CONCILIATION AND APPEALS BOARD

October 14, 1971

Participating:

Judah Gribetz, Chairman
Frank C. Arricale
Frank A. Barrera
Dean Jerome Prince
Irving H. Stolz
Jacob B. Ward
William J. Williams

Concurring:

Mrs. Barbara Reach

ITEM I

Relevant Sections of the New York City Rent Stabilization Law and related enactments

NEW YORK CITY RENT STABILIZATION LAW

Sections YY51-1.0 to YY51-7.0, set forth below, comprise the rent stabilization law in effect on March 31, 1974, in the City of New York. These provisions were enacted by Local Law No. 16 of 1969 and are designated as YY51-1.0 to YY51-7.0 of the Administrative Code of the City of New York.

Sec.

YY51-1.0 Findings and declaration of emergency.

YY51-2.0 Short title.

YY51-3.0 Application.

YY51-3.1 Application to multiple family complex.

YY51-3.1 Application to hotels.

YY51-4.0 Stabilization of rents.

YY51-5.0 Rent guidelines board.

YY51-6.0 Real estate industry stabilization associations.

YY51-6.1 Hotel industry stabilization associations.

YY51-6.2 Suspension of registration.

YY51-7.0 Separability clauses.

Section YY51 - 1.0 Findings and declaration of emergency

The Council hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons within the City of New York which emergency was created by war, the effects of war and the aftermath of hostilities; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist an acute shortage of dwellings; that unless residential rents and eviction continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; that to prevent such perils to health, safety and welfare, preventive action by the Council con-

tinues to be imperative; that such action is necessary in order to prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; that the transition from regulation to a normal market of free bargaining between landlord and tenant, while still the objective of state and city policy, must be administered with due regard for such emergency; and that the policy herein expressed is now administered locally within the city of New York by an agency of the city itself, pursuant to the authority conferred by chapter twenty-one of the laws of nineteen hundred sixty-two.

The Council further finds that many owners of housing accommodations in mul-

tiple dwellings not subject to the provisions of the city rent and rehabilitation law, enacted pursuant to said enabling authority, either because they have been constructed since nineteen hundred forty-seven or because they were decontrolled due to monthly rental of two hundred fifty dollars or more or for other reasons are demanding exorbitant and unconscionable rent increases as a result of the aforesaid emergency which has led to a continuing restriction of available housing, as evidenced by the 1968 vacancy survey by the United States Bureau of the Census; that such increases are being exacted under stress of prevailing conditions of inflation and of an acute housing shortage resulting from a sharp decline in private residential construction brought about by a combination of local and national factors; that such increases

and demands are causing severe hardship to tenants of such accommodations and are uprooting long-time city residents from their communities; that unless such accommodations are subject to reasonable rent and eviction limitations, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; and that such conditions constitute a grave emergency.

* * *

Section YY51 - 1.0 Findings and declaration of emergency

Savings Provision. L.1974, c.576, § 15, eff. May 29, 1974 until July 1, 1981, as amended L.1976, c.486, § 2; L.1977, c. 203, § 1, provided that: "Construction. All rights, remedies and obligations heretofore created pursuant to the New York city rent stabilization law, including those contained in the code of the rent stabilization association of New York city, approved by the New York city housing and development administration, and the orders of the conciliation and appeals board, shall inure to the benefit of all owners and tenants of units subject to this chapter [L.1974, c. 576]. Nothing herein contained shall in any way diminish the powers of the conciliation and appeals board, the rent guidelines board of the New York city housing and development administra-

tion to make, amend or modify rules, regulations, or guidelines pursuant to this chapter or any local law."

* * *

Section YY51 - 3.0 Application

This law shall apply to

a. Class A multiple dwellings not owned as a cooperative or as a condominium, containing six or more dwelling units which:

(1) were completed after February first, nineteen hundred forty-seven, except dwelling units (a) owned or leased by, or financed by loans from, a public agency or public benefit corporation, (b) subject to rent regulation under the private housing finance law or any other state law, (c) aided by government insurance under any provision of the National Housing Act, to the extent this local law or any regulation or order issued thereunder is inconsistent therewith, or (d) located in a building for which a certificate of occupancy is obtained after March tenth, nineteen hundred sixty-nine; or (e) any class A multiple dwelling which on June first, nineteen hundred sixty-eight was and still is commonly regarded as a hotel, transient hotel or residential hotel, and which customarily provides hotel service such as maid service, fur-

nishing and laundering of linen, telephone and bell boy service, secretarial or desk service and use and upkeep of furniture and fixtures; or (2) were decontrolled by the city rent agency pursuant to section Y51-12.0 of the city rent and rehabilitation law; or (3) are exempt from control by virtue of items (1), (2), (6) or (7) of subparagraph (i) of paragraph 2 of subdivision e of section Y51-3.0 of such law; and

b. other housing accommodations made subject to this law pursuant to the emergency tenant protection act of nineteen seventy-four. As amended L.1974, c.576, §7.

Section YY51 - 3.1 Application to multiple family complex

For purposes of this title a class A multiple dwelling shall be deemed to in-

clude multiple family garden-type maisonette dwelling complex containing six or more dwelling units having common facilities such as sewer line, water main, and heating plant, and operated as a unit under a single ownership on May sixth, nineteen hundred sixty-nine, notwithstanding that certificates of occupancy were issued for portions thereof as one- or two- family dwellings.

* * *

Section YY51 - 4.0 Stabilization of rents

a. Dwelling units covered by this law as provided in section YY51-3.0 or section YY51-3.1 shall be deemed to be housing accommodation subject to control under the provisions of title Y of chapter fifty-one of the administrative code notwithstanding any provision of such title to the contrary, unless the owner of such units is a member in good standing of any association registered with the housing

and development administration pursuant to section YY51-6.0 or section YY51-6.1. For the purposes of this law a "member in good standing" of such an association shall mean an owner of a housing accommodation subject to this law who joined such an association within thirty days of its registration with the housing and development administration or within thirty days after becoming such owner or within sixty days after such housing accommodation becomes subject to regulation pursuant to the emergency tenant protection act of nineteen seventy-four, whichever is later, provided such accommodations were not under actual control of the city rent agency when he became the owner thereof, and further provided such owner complies with prescribed levels of fair rent increases established under this law or with guidelines for rent adjustments authorized pursuant to the

emergency tenant protection act of nineteen seventy-four and this law, does not violate any order of the conciliation and appeals board and is not found by the conciliation and appeals board to have harassed a tenant to obtain vacancy of his housing accommodation.

b. In the event that such dwelling units shall be subject to control under the provisions of such title as provided in subdivision a, the city rent agency shall establish the maximum rent therefor on the basis of the rent charged on May thirty-first, nineteen hundred sixty-eight.

c. The housing and development administration shall have power to promulgate such rules and regulations as it may deem necessary for the effective implementation of this law.

* * *

Section YY51 - 6.0 Real estate industry stabilization association

a. A real estate industry stabilization association having as members the owners of no less than forty percent of the dwelling units covered by section YY51-3.0 of this law may register with the housing and development administration under the terms and for the purpose herein provided by filing with such administration copies of its articles of incorporation or association, copies of its rules, and such other information as the administration may require within sixty days of the effective date of this law.

b. An association shall not be accepted for registration hereunder unless it appears to the housing and development administration that (1) consistent with the

provisions of section YY51-4.0 membership is open to any owner of a multiple dwelling having dwelling units covered by this law as provided in section YY51-3.0; (2) the association has adopted a code for stabilization of rents covering related terms and conditions of occupancy which is approved by such administration; (3) the association has established a conciliation and appeals board consisting of four members representing the public, four members representing the real estate industry and an impartial chairman, all to be appointed by the mayor with the approval of the council, to serve until April first, nineteen hundred seventy-four, to receive and act upon complaints from tenants and upon appeals from owners claiming hardship under the levels for fair rent increases adopted under this

law; (4) each member is required to agree in writing to comply with the code and to abide by orders of the conciliation and appeals board; and (5) the association is of such character that it will be able to carry out the purposes of this law.

c. A code shall not be approved hereunder unless it appears to the housing and development administration that such code (1) is designed to provide safeguards against unreasonably high rent increases and, in general, to protect tenants and the public interest, and not to impose any industry wide schedule of rents or minimum rentals; (2) binds the members of the association not to exceed the level of fair rent increases under any lease renewal or new tenancy bearing an effective date on or after June first, nineteen hundred sixty-eight for dwelling units

covered by this law or, on or after the local effective date of the emergency tenant protection act of nineteen seventy-four to comply with the provisions of section YY51-6.0.1, provided that nothing herein shall supersede or modify the rent increase permitted by the city rent agency following decontrol pursuant to section Y51-12.0 of the city rent and rehabilitation law and the regulations adopted thereunder; (3) provide for a cash refund or a credit to be applied against future rent in the amount of the excess, if any, of rent paid since January first, nineteen hundred sixty-nine over the permitted level of fair rent increases; (4) includes provisions, subject to section YY51-4.1(1) f. requiring members to grant a two or three-year lease at the option of the tenant; requiring members to grant a one

year renewal lease upon the request of a tenant at such fair rent levels provided for by the rent guidelines board except where a mortgage or mortgage commitment existing as of April first, nineteen hundred sixty-nine, provides that the mortgagor shall not grant a one year lease; and further requiring members to allow any tenant sixty-two years of age or older who has a lease commencing on or after July first, nineteen hundred seventy-four to extend the term to a full two or three year term upon request of such tenant on or before September thirtieth, nineteen hundred seventy-five. Members shall certify on forms prescribed by the conciliation and appeals board, to all tenants in occupancy of dwelling units subject to this title, the amount of the legal regulated rent and any guidelines

increase in such rent for lease renewal pursuant to and as authorized by the New York city rent guidelines board, or certify the legal regulated rent and the lawful increase in such rent ordered by the conciliation and appeals board based on owner hardship. Members shall serve such notice as the conciliation and appeals board shall require on tenants under renewal lease terms which commence on or after July first, nineteen hundred seventy-four and prior to September thirtieth, nineteen hundred seventy-five; (5) includes guidelines with respect to such additional rent and related matters as, for example, security deposits, advance rental payments, the use of escalator clauses in leases and provision for increase in rentals for garages and other ancillary facilities, so as to insure that the level of fair rent increase established

under this law will not be subverted and made ineffective; (6) provides criteria whereby the conciliation and appeals board may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide (a) as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of opera-

tion if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the conciliation and appeals board that he acquired title to the building as a result of a bonafide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided; and (b) as to completed building-

wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized over a five-year period, based upon cash purchase price exclusive of interest or service charges. Notwithstanding anything to the contrary contained herein, no increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the conciliation and appeals board, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the conciliation and appeals board, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervi-

sion of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectivity of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years; (7) estab-

lishes a fair and consistent formula for allocation of rental adjustment to be made upon granting of an increase by the conciliation and appeals board; (8) requires the members of the association to maintain all services furnished by them on May thirty-first, nineteen hundred sixty-eight, in connection with the leasing of the dwelling units covered by this law; (9) provides that an owner shall not refuse to renew a lease except where he intends in good faith to demolish the building and has obtained a permit therefor from the department of buildings or where he has submitted to and the attorney general has accepted for filing an offering plan to convert the building to cooperative or condominium ownership, and the owner has presented the offering plan to the tenants in occupancy and has filed a copy thereof

with the housing and development administration, and the plan provides: (a) the plan will not be declared effective unless and until thirty-five per cent of the tenants then in occupancy have agreed to purchase dwelling units or the stock entitling them to proprietary leases for such dwelling units with no discriminatory repurchase agreement or other discriminatory inducement; (b) the tenants in occupancy at the time of the offering shall have the exclusive right to purchase their dwelling units or the shares allocated thereto for ninety days after the offering, during which time a tenant's dwelling unit shall not be shown to a third party unless he has, in writing waived his right to purchase; (c) subsequent to the expiration of the ninety days exclusive right to purchase set forth in (b) above, a tenant in

occupancy of a dwelling unit who has not purchased shall be given the exclusive right for an additional period of six months from said expiration date to purchase said dwelling unit or shares allocated thereto on the same terms and conditions as are contained in an executed contract to purchase said unit or shares entered into by a bona fide purchaser, such exclusive right to be exercisable within fifteen days from the date of mailing by registered mail of notice of the execution of a contract of sale together with a copy of said executed contract; (d) for a period of at least one year after the offering and until such time as the plans declared effective, whichever is later, he shall be entitled to remain in possession without any increase in his rent, although his lease may have expired,

and thereafter, if he has not purchased, he may be removed by the owner or a purchaser of the dwelling unit or proprietary lessee entitled to possession of such dwelling unit; (e) if the tenant's lease expires after the period during which he otherwise has the right to remain in possession as hereinabove provided, he shall not be required to vacate his dwelling unit until the expiration of his lease, unless such lease is terminated in accordance with such code; and (f) if the plan has not been declared effective within eighteen months from the date of the presentation of such plan to the tenants, it will be declared abandoned, and if the plan is abandoned or is not declared effective within such eighteen month period, the tenants then in possession shall have the right to demand leases in accordance

with this law; provided that this section shall apply only to tenants in occupancy at the time of the presentation of the plan and shall not be applicable to tenants who are not in occupancy or to subtenants, that any dwelling unit which shall become vacant prior to the transfer of the property to the cooperative corporation or the condominium owner, or a declaration of abandonment of the offering plan, shall not be rented except at a rental which would have been authorized had the vacating tenant remained in possession, and provided further that notwithstanding anything contained herein to the contrary, any renewal or vacancy lease executed after notice to the housing and development administration that a proposed cooperative or condominium plan has been submitted to the attorney general may con-

tain a provision that the lease may be cancelled after ninety days' notice to the tenant that the plan has been declared effective, and under any lease containing such a provision, upon submission of the plan of cooperative or condominium ownership to the tenant after acceptance by the attorney general no increase in rent may be collected thereafter pursuant to said lease; and on specified grounds set forth in the code approved by the housing and development administration consistent with the purpose of this law; (10) specifically provides that if a member fails to comply with any level of fair rent increase established under this law or any order of the conciliation and appeals board or is found by the conciliation and appeals board to have harassed a tenant to obtain vacancy of his housing accommodation, he shall not be a member in good

standing of the association; (11) for any violation of the articles, code or other rule or regulation of the association, other than those specified in subparagraph (10) immediately preceding, members shall be appropriately disciplined by such sanction as fine or censure; and (12) provides for the imposition of dues upon the association's members solely for the purpose of defraying the reasonable expenses of administration and authorizing the equitable allocation of dues among the association's members; (13) establishes procedures for senior citizen rent increase exemptions and equivalent tax abatement for rent regulated property in accordance with the provisions of section YY51-4.1.

* * *

Conciliation and Appeals Board; Members; Powers. L.1974, c. 576, § 6, eff. May 29, 1974 until July 1, 1981, as amended L.1976, c. 486, § 2; L.1977, c. 203, § 1, provided that: "a. The New York city conciliation and appeals board established pursuant to the provisions of section YY51-6.0 of the administrative code of the city of New York is hereby continued as a nine member board to be appointed by the mayor with the approval of the city council. Four members shall be representative of tenants, four members shall be representative of owners, and one member shall be designated by the mayor serve as the impartial chairman and shall hold no other public office. Two members representative of tenants and two members representative of owners shall serve for terms ending two years from January first next succeeding

the dates of their appointment; two members representative of tenants and two members representative of owners shall serve for terms ending three years from January first next succeeding the dates of their appointment and the impartial chairman shall serve for a term ending four years from January first next succeeding the date of his appointment. All successor members shall serve for terms of four years each. Members shall continue in office until their successors have been appointed and qualified. The mayor shall fill any vacancy which may occur by reason of death, resignation, or otherwise in a manner consistent with the original appointment. A member may be removed by the mayor for cause, but not without an opportunity to be heard in person or by counsel, in his defense, upon not less than ten days notice.

"b. The powers of the board shall be vested in and exercised by no less than five of the members thereof then in office two of whom shall be representative of tenants; two of whom shall be representative of owners and one of whom shall be the impartial chairman or a member acting on his behalf. The board may delegate to one or more of its members, officers, agents or employees such powers and duties as it may deem proper.

"c. The board shall continue until terminated by law.

"d. The board shall have power to appoint officers, agents, and employees, prescribe their duties and fix their compensation and to do any and all things necessary or convenient to administer the regulation and control of residential rents as provided in the rent stabilization law of

nineteen hundred sixty-nine and the emergency tenant protection act of nineteen seventy-four; notwithstanding any provision of law to the contrary.

"e. The board's powers shall include but shall not be limited to, the powers:

"(1) To sue and be sued;

"(2) To have a seal and alter the same at pleasure;

"(3) To make and execute contracts and all other instruments necessary or convenient for the exercise of its power and functions under this act;

"(4) To make and alter by-laws for its organization and internal management, to make rules and regulations governing the use of its property and facilities;

"(5) To acquire, hold and dispose of personal property;

"(6) To procure insurance against

any loss in connection with its property and other assets in such amounts, and from such insurers, as it deems desirable;

"(7) To accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or the city or from any other source and to comply, subject to the provisions of this act, with the terms and conditions thereof;

"(8) To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice;

"(9) To administer oaths, take evidence, issue subpoenas, conduct investigations and designate officers to hear and report;

"(10) To do any and all things

necessary or convenient to carry out the purposes and exercise its powers.

"f. The New York city conciliation and appeals board shall administer its regulation of residential rents as provided in the rent stabilization law of nineteen hundred sixty-nine and the emergency tenant protection act of nineteen seventy-four."

ITEM J

Relevant Sections of the Emergency Tenant Protection Act of Nineteen Seventy-Four

CHAPTER 5 - EMERGENCY TENANT PROTECTION ACT OF NINETEEN SEVENTY-FOUR [NEW]

Sec.

8621. Short title.

8622. Legislative finding.

8623. Local determination of emergency; end of emergency.

8624. Establishment of rent guidelines boards; duties.

8625. Housing accommodations subject to regulation.

8626. Regulation of rents.

8627. Maintenance of services.

8628. Administration.

8629. Application for adjustment of initial legal regulated rent.

8630. Regulations.

8631. Non-waiver of rights.

8632. Enforcement.

8633. Cooperation with other governmental agencies.

8634. Application of act.

§ 8621. Short title

This act shall be known and may be cited as the "emergency tenant protection act of nineteen seventy-four".

§ 8622. Legislative finding

The legislature hereby finds and declares that a serious public emergency continues to exist in the housing of a considerable number of persons in the state of New York which emergency was at its inception created by war, the effects of war and the aftermath of hostilities, that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist in many areas of the state an acute shortage of housing accommodations caused by continued high demand,

attributable in part to new household formations and decreased supply, in large measure attributable to reduced availability of federal subsidies, and increased costs of construction and other inflationary factors; that a substantial number of persons residing in housing not presently subject to the provisions of the emergency housing rent control law or the local emergency housing rent control act are being charged excessive and unwarranted rents and rent increases; that preventive action by the legislature continues to be imperative in order to prevent exaction of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; that in order to prevent uncertainty, hardship and

dislocation, the provisions of this act are necessary and designed to protect the public health, safety and general welfare; that the transition from regulation to a normal market of free bargaining between landlord and tenant, while the ultimate objective of state policy, must take place with due regard for such emergency; and that the policy herein expressed shall be subject to determination of the existence of a public emergency requiring the regulation of residential rents within any city, town or village by the local legislative body of such city, town or village.

§ 8623. Local determination of emergency; end of emergency

a. The existence of public emergency requiring the regulation of residential rents for all or any class or classes of

housing accommodations heretofore destabilized; heretofore or hereafter decontrolled, exempt, not subject to control, or exempted from regulation and control under the provisions of the emergency housing rent control law, the local emergency housing rent control act or the New York city rent stabilization law of nineteen hundred sixty-nine, or subject to stabilization or control under such rent stabilization law, shall be a matter for local determination within each city, town or village. Any such determination shall be made by the local legislative body of such city, town or village on the basis of the supply of housing accommodations within such city, town or village, the condition of such accommodations and the need for regulating and controlling residential rents within such city, town or village. A dec-

laration of emergency may be made as to any class of housing accommodations if the vacancy rate for the housing accommodations in such class within such municipality is not in excess of five percent and a declaration of emergency may be made as to all housing accommodations if the vacancy rate for the housing accommodations within such municipality is not in excess of five percent.

b. The local governing body of a city, town or village having declared an emergency pursuant to subdivision a of this section may at any time, on the basis of the supply of housing accommodations within such city, town or village, the condition of such accommodations and the need for continued regulation and control of residential rents within such municipality, declare that the emergency is either wholly

or partially abated or that the regulation of rents pursuant to this act does not serve to abate such emergency and thereby remove one or more classes of accommodations from regulation under this act. The emergency must be declared at an end once the vacancy rate described in subdivision a of this section exceeds five percent.

c. No resolution declaring the existence or end of an emergency, as authorized by subdivisions a and b of this section, may be adopted except after public hearing held on not less than ten days public notice, as the local legislative body may reasonably provide.

* * *

§ 8625. Housing accommodations subject to regulation

a. A declaration of emergency may be made pursuant to section three as to all or

any class or classes of housing accommodations in a municipality, except:

(1) housing accommodations subject to the emergency housing rent control law, or the local emergency housing rent control act, other than housing accommodations subject to the New York city rent stabilization law of nineteen hundred sixty-nine;

(2) housing accommodations owned or operated by the United States, the state of New York, any political subdivision, agency or instrumentality thereof, any municipality or any public housing authority;

(3) housing accommodations in buildings in which rentals are fixed by or subject to the supervision of the state division of housing and community renewal under other provisons of law or the New York city department of housing preservation and development or the New York state urban de-

velopment corporation, or, to the extent that regulation under this act is inconsistent therewith aided by government insurance under any provision of the National Housing Act;

(4)(a) housing accommodations in a building containing fewer than six dwelling units;

(b) for purposes of this paragraph four, a building shall be deemed to contain six or more dwelling units if it is part of a multiple family garden-type maisonette dwelling complex containing six or more dwelling units having common facilities such as a sewer line, water main or heating plant and operated as a unit under common ownership, notwithstanding that certificates of occupancy were issued for portions thereof as one- or two-family dwellings.

(5) housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January first, nineteen hundred seventy-four;

(6) housing accommodations owned or operated by a hospital, convent, monastery, asylum, public institution, or college or school dormitory or any institution operated exclusively for charitable or educational purposes on a non-profit basis;

(7) rooms or other housing accommodations in hotels, other than hotel accommodations in cities having a population of one million or more not occupied on a transient basis and heretofore subject to the emergency housing rent control law, the local emergency housing rent control act or to the New York city rent stabilization law

of nineteen hundred sixty-nine;

(8) any motor court, or any part thereof, any trailer, or trailer space used exclusively for transient occupancy or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof;

The term "motor court" shall mean an establishment renting rooms, cottages or cabins, supplying parking or storage facilities for motor vehicles in connection with such renting and other services and facilities customarily supplied by such establishments, and commonly known as motor, auto or tourist court in the community.

The term "tourist home" shall mean a rooming house which caters primarily to transient guests and is known as a tourist home in the community.

(9) non-housekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if:

(a) no more than two tenants for whom rent is paid (husband and wife being considered one tenant for this purpose), not members of the landlord's immediate family, live in such dwelling unit, and

(b) the remaining portion of such dwelling unit is occupied by the landlord or his immediate family.

(10) housing accommodations in buildings operated exclusively for charitable purposes on a non-profit basis;

(11) housing accommodations which are not occupied by the tenant in possession as his primary residence.

ITEM K

Relevant Sections of the Amended Code of the Rent Stabilization Association of N.Y.C., Inc.

Amended Code Of The Rent Stabilization Association of N.Y.C., Inc.

Introduction

On May 12, 1969 the New York City Council enacted the Rent Stabilization Law. This law provided for a rent stabilization system for approximately 400,000 dwelling units most of which had been built between 1947 and 1969, and the balance being dwelling units which had been decontrolled pursuant to specified provisions of the City Rent Law.

In 1971, the State Legislature provided for the decontrol of all voluntarily vacated rent controlled or rent stabilized apartments.

On March 20, 1974 the Mayor signed into Law, Local Law 1 of 1974 extending the provisions of the Rent Stabilization Law for an additional five-year term, thereby continuing without interruption the rights and obligations of tenants and owners of

approximately 270,000 stabilized dwelling units. On May 29, 1974 and June 13, 1974, respectively, the State of New York enacted Chapters 576 and 941 of the Laws of 1974 Authorizing The City of New York to expand the jurisdiction of the Rent Stabilization Law until July 1, 1976 to all dwelling units which: (a) had previously been subject to the Rent Stabilization Law or the City Rent Law but which had been vacancy destabilized or vacancy decontrolled after July 1, 1971; and (b) which are still subject to the City Rent Law but become vacant in the future; and (c) which were built between March 10, 1969 and December 31, 1973; and (d) which were or are decontrolled because of owner occupancy; and (e) which were entitled to tax exemption benefits under Section 423 of the Real Property Tax Law.

By adoption of Resolution No. 276 on June 20, 1974, the New York City Council

placed these additional dwelling units, an estimated 450,000 in number, under the Rent Stabilization Law effective July 1, 1974.

To distinguish between those units which had been and continued subject to the Rent Stabilization Law prior to the local effective date of Chapter 576 and/or 941 from those dwelling units which have or will become subject to the Rent Stabilization Law solely by virtue of Chapters 576 and 941, this Code refers to the former class of units as dwelling units subject to the Rent Stabilization Law on June 30, 1974, and to the latter classes of units as dwelling units subject to the Rent Stabilization Law on or after July 1, 1974.

Section 1. Statutory Authority

This Code of the Rent Stabilization Association of New York City, Inc,, is adopted subject to approval of the Housing and Development Administration

pursuant to the powers granted to and in accordance with the Rent Stabilization Law of 1969 (Local Law 16 of 1969) as extended by Local Law 1 of 1974 of The City of New York and as amended by and in accordance with the provisions of Chapter 576, Laws of 1974 of the State of New York (hereinafter referred to by the short title "Chapter 576"), Chapter 941, Laws of 1974 of the State of New York (hereinafter referred to by the short title "Chapter 576"), Chapter 941, Laws of 1974 of the State of New York (hereinafter referred to by the short title "Chapter 941"), and the resolution of the City Council of The City of New York No. 276 adopted June 20, 1974 and effective July 1, 1974. As used in this Code the term "RSL" shall mean the Rent Stabilization Law; the term "CAB" shall mean the New York City Conciliation and Appeals Board, and the term "RSA" shall

mean the Rent Stabilization Association of N.Y.C., Inc.

* * *

Section 2. Definitions

(m) "Required Services": - (1) That space and those services which were furnished or were required to be furnished for the dwelling unit on May 31, 1968, and all additional services provided or required to be provided thereafter or with respect to a building subject to the RSL pursuant to Section 421 of the Real Property Tax Law, the date of issuance of the permanent Certificate of Occupancy and all additional services provided or required to be provided thereafter. These shall to the extent so furnished or required to be furnished, include repairs, decorating and maintenance, the furnishing of light, heat, hot and cold water, telephone, elevator service removal of refuse

and janitorial services and ancillary services including but not limited to garage space and service, protective services and recreational facilities; provided that (a) for dwelling units subject to the RSL on June 30, 1974 or subject to the provisions of Section 421 or Section 423 of the Real Property Tax Law, in the case of any required or ancillary services for which a separate charge was made on May 31, 1968 (i) where there is a common ownership directly or indirectly between the operator of any such services and the owner, any such charge shall be within the limitations of the RSL: (ii) where no such common ownership existed either on May 31, 1968 or on the effective date of the RSL and such services were provided on such effective date by an independent contractor pursuant to a contract with the owner such charges shall

be excluded from the provisions of this Code, (b) For dwelling units subject to the RSL on June 30, 1971 and exempted thereafter as a result of vacancy prior to July 1, 1974, any required or ancillary services for which a separate charge was made on May 31, 1968 (i) where there is a common ownership directly or indirectly between the operator of any such services and the owner, any such charges shall be within the limitations of the RSL: (ii) where no such common ownership existed either on May 31, 1968 or on the effective date of the RSL and such services were provided on such effective date by an independent contractor pursuant to a contract with the owner such charges shall be excluded from the provisions of this Code; (c) for all other dwelling units which become subject to the RSL on or after July 1, 1974 any required or ancillary ser-

vices for which a separate charge was made on May 29, 1974 (i) where there is a common ownership directly or indirectly between the operator of any such service and the owner, any such charge shall be within the limitations of the RSL: (ii) where no such common ownership existed on May 29, 1974 and such services were provided on such effective date by an independent contractor pursuant to a contract with the owner such charges shall be excluded from the provisions of this Code. A copy of any such contract shall be filed with the Industry Association no later than 30 days from the date of approval of this Code. Owners shall comply with the requirement of the Housing Maintenance Code that each dwelling unit must be painted at least once every three years. In the event of a lease renewal for a term of less than three years,

the tenant may be required to bear a pro rata part of the actual painting cost provided however, that such charge shall be proportionally refundable to the tenant in the event the same tenant further renews.

(2) Required Services resulting from amendments to the RSL and pursuant to the provisions of Chapter 576.

(i) The required building-wide services for dwelling units subject to the RSL on June 30, 1971 and exempted thereafter as the result of vacancy prior to July 1, 1974, shall be those services provided or required to be provided on May 31, 1968; the required individual unit services for such dwelling units shall be those services provided or required to be provided on May 29, 1974.

(ii) The required building-wide and individual unit services for dwelling units

which become subject to the RSL on July 1, 1974 pursuant to Section 423 of the Real Property Tax Law shall be those services provided or required to be provided on May 29, 1974, and all additional services provided or required to be provided thereafter, except that for dwelling units in Riverton which became subject to the RSL on July 1, 1974 pursuant to an initial legal regulated rent date of June 30, 1973, the required building-wide and individual unit services shall be those services provided or required to be provided on June 30, 1973, and all additional services provided or required to be provided thereafter.

(iii) The required building-wide and individual unit services for all other dwelling units not subject to the RSL on June 30, 1974 which become subject to the RSL on or after July 1, 1974, shall be those services

provided or required to be provided on May 29, 1974 and all additional services provided or required to be provided thereafter.

(iv) Notwithstanding any other provision of this Code, nothing shall operate to modify the required services for a dwelling unit subject to the RSL on June 30, 1974, and such building wide and individual unit services shall be those services provided or required to be provided on May 31, 1968 and all additional services provided or required to be provided thereafter.

* * *

Section 7

A member shall forfeit his status as a member in good standing and shall have his membership with respect to the entire building or any dwelling unit therein suspended or terminated pursuant to an order of the CAB, in the event said Board deter-

mines that with respect to one or more dwelling units in the building he has either:

(a) willfully exceeded the level of fair rent increase established by the RSL, the Guidelines Board, or this Code. All charges in excess of the level of fair rent increases shall be deemed willful unless the member proves otherwise, or

(b) has refused to abide by an order of said CAB within ten days of the date of issuance of such order, or

(c) has been found by the CAB to have harassed a tenant to obtain vacancy of his apartment.

* * *

Section 8

Any action of any member constituting a violation of the RSL or this Code other than a violation as described in section 7, shall

result in such discipline, fine or sanction, as may be determined by the Board of Directors of the Industry Association or the CAB.

* * *

Section 34

The CAB shall, in addition to the general powers conferred upon it by the RSL, Chapter 576 and this Code, have the following specific duties:

A. The determination of any complaints of harassment instituted by a tenant;

B. The determination of any claim of violation against any member requiring suspension or other discipline pursuant to Sections 7 and 8 of this Code . . . .

* * *

Section 62

A. The stabilization rents and other requirements provided in this Code shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of dwelling units by requiring the tenant to pay or obligate himself for membership or other fees, or by modification of the practices relating to payment of commissions or other charges, or by modification of the services furnished or required to be furnished with the dwelling units, or otherwise.

. . .

E. In addition to any other remedy afforded by law, any tenant may apply to the CAB for a reduction in the rent to the level in effect prior to the most recent guidelines adjustment and the CAB may so reduce the rent if it finds that the owner has failed to maintain required services.

ITEM L

Rule 7 of the Rules of the Conciliation and Appeals Board

Rules of the Conciliation and Appeals Board

Rule 7. After the conclusion of a hearing conducted by a hearing officer pursuant to Rule 6, or, if the Board does not require a hearing, after the completion of the hearing officer's study of the documents submitted in support of, and in opposition to, an owner's hardship application, or, in the event that no hearing is held, after the completion of the hearing officer's study of the documents submitted in support of, or in opposition to a complaint, the hearing officer shall prepare and submit to the Board, together with the record and such briefs as may be filed, a report setting forth (a) the name and address of the applicant or complainant, (b) the names and addresses of the persons who appeared in opposition to the application or complaint, (c) the

names of counsel, (d) the date or dates of the hearing if one was held, (e) the substance of the application or complaint, (f) the issues presented, (g) the findings of fact based upon the entire record, and (h) a recommendation to the Board for action by the Board. The Board shall then, after due deliberation, make its determination and shall prepare an opinion setting forth its determination and the grounds and reasons therefor. In the case of a hardship application, two copies of this opinion shall be mailed to the applicant, and it shall be the duty of the applicant, immediately upon receipt of the copies, to post one copy of the opinion in a conspicuous place in the building involved. In the case of a complaint, a copy of the opinion shall be mailed to the tenant and to the owner.